In re Pollitz, 206 U. S. 323, 51 L. ed. 1081, 27 Sup. Ct. 729. *Ex parte Nebraska,* 209 U. S. 436, 52 L. ed. 876, 28 Sup. Ct. 581, *Ex parte Gruetter,* supra. The final affirmance of the doctrine expressed in these cases, and the express disapproval of the rule laid down in *Ex parte Wisner,* supra, establishes beyond all doubt the proposition that the Circuit Court of the United States, being a court of general jurisdiction, has the power to decide for itself whether or not it has jurisdiction to try a cause properly brought before it and further that the writ of mandamus cannot be used to subserve the purpose of a writ of error or an appeal.

STREET RAILROADS—RIGHT OF WAY AS BETWEEN VEHICLES AND STREET CARS.—P. drove his wagon down a street that intersected at a right angle with another upon which D. had a double track. When P. reached the corner, he saw one of D's cars about 125 to 135 feet away, coming rapidly toward him. He endeavored to cross the tracks and a collision occurred just as he attempted to pull his horse back off the second track upon which the car was approaching, the motorman having made no effort to check his car. *Held,* (JENKS, J., dissenting), that the superior right or preference that a street car has between streets as to vehicles, does not exist at the intersection of streets, that their rights are equal, that it is the duty of the motorman to have his car under reasonable control at crossings, and that it was a question for the jury and not for the court, to determine whether P. used due care in attempting to cross in front of the car. New trial granted. *Huther* v. *Nassau Electric R. Co.* (1911), 126 N. Y. Supp. 1105.

As to the part of the street occupied by a street railway's track and which is between crossings, the right of the traction company to use it is not exclusive, but from the fact that the cars cannot move off of the tracks, the right to the use of that part of the highway is superior to that of vehicles in that while a person may drive upon the portion occupied by the railroad's roadbed, he must exercise due care in not interfering unduly with the movement of cars, and in not affording opportunity for collisions. *Barto* v. *Beaver Traction Co.,* 216 Pa. 328, 116 Am. St. Rep. 770; *N. Chi. etc. R. Co.* v. *Zeigler,* 182 Ill. 9, 74 Am. St. Rep. 157; *Shea* v. *Potrero & B. R. Co.,* 44 Cal. 414; *Citizens etc. R. Co.* v. *Howard,* 102 Tenn. 474; *Marden* v. *Portsmouth etc. Ry. Co.,* 100 Me. 41, 69 L. R. A. 30, 109 Am. St. Rep. 476; *State* v. *Foley,* 31 Ia. 527; *Lake Roland etc. Ry. Co.* v. *McKewen,* 80 Md. 593. The courts are practically unanimous in holding that at street crossings, the traction company's cars have no superior right of any kind over vehicles, and that the right of crossing is equal, and that each must exercise the right of crossing in a reasonable and prudent manner so as not to interfere unreasonably with the right of the other. *Chicago etc. Ry. Co.* v. *Martensen,* 100 Ill. App. 306, affirmed 198 Ill. 511; *Marden* v. *Portsmouth etc. Ry. Co.,* supra; *Nashville Ry. Co.* v. *Norman,* 108 Tenn. 324; *Atlantic etc. R. Co.* v. *Rennard,* 62 N. J. L. 773; *Smith* v. *Minneapolis St. Ry. Co.,* 95 Minn. 254; *Toledo etc. Ry. Co.* v. *Westenhuber,* 22 Oh. C. C. R. 67; *Richmond Ry. Co.* v. *Garthright,* 92 Va. 627, 32 L. R. A. 220; *Helber* v. *Spokane St. Ry. Co.,* 22 Wash. 319; *Pilmer* v. *Boise Traction Co.,* 14 Idaho 327, 15 L. R. A. (N. S.) 254. The courts split on the

proposition as to whether the duty rests upon the driver of a vehicle to look and listen before he attempts to cross the street car tracks, and whether (as is generally held in the case of steam railroad crossings) it is negligence per se to fail so to do. That it is, *Burns* v. *Metropolitan St. Ry. Co.*, 66 Kan. 188; *Hooks* v. *Huntsville etc. Co.*, 147 Ala. 700, 41 South. 273; *Doherty* v. *Detroit etc. Ry. Co.*, 118 Mich. 209; *Wolf* v. *City etc. Ry. Co.*, 45 Ore. 446; *Stafford* v. *Chippewa etc. R. Co.*, 110 Wis. 331; *Young* v. *Citizens St. Ry. Co.*, 148 Ind. 54; *McGee* v. *Consolidated St. Ry. Co.*, 102 Mich. 107, 26 L. R. A. 300; *McCracken* v. *Consolidated etc. Ry. Co.*, 201 Pa. 378. Other courts agreeing with the principal case say that the fact that the person driving across at the crossing did not look and listen is not negligence per se, but that it is a question for the jury whether he acted as an ordinarily prudent man would have acted under the particular circumstances before he attempted to cross. *Pilmer* v. *Boise Traction Co.*, supra; *Marden* v. *Portsmouth etc. Ry. Co.*, supra; *Los Angeles Tr. Co.* v. *Conneally*, 136 Fed. 104, 69 C. C. A. 92; *Roberts* v. *Spokane etc. Ry. Co.*, 23 Wash. 325, 54 L. R. A. 184; *Finnick* v. *Boston etc. Ry. Co.*, 190 Mass. 382; *Wilson* v. *Memphis etc. Ry. Co.*, 105 Tenn. 74; *Bars, Adm'r.* v. *Norfolk etc. Ry. Co.*, 100 Va. 1; *Watson* v. *Minneapolis etc. Ry. Co.*, 53 Minn. 551.

TORTS—LIABILITY OF INFANTS FOR NEGLIGENCE.—Plaintiff, a boy about ten years old, and defendant a boy of the same age, attended the same school and were friends. Both were playing in the schoolyard during recess, and as plaintiff was kneeling to shoot a marble, defendant came running around the schoolhouse, being chased by another boy, and accidentally ran into plaintiff, knocking him over and so injuring plaintiffs eye that his sight was destroyed. *Held*, the evidence was insufficient to establish actionable negligence on the part of defendant. *Briese* v. *Maechtle* (1911), — Wis. —, 130 N. W. 893.

It has never been doubted in English law that an infant is liable for his torts, unconnected with his contracts. Y. B. 35 Hen. VI, f. 11, pl. 18 (1456); *Peterson* v. *Haffner*, 59 Ind. 130, 26 Am. Rep. 81, and note; *Vosbury* v. *Putney*, 80 Wis. 523, 50 N. W. 403. But one engaged in a lawful or purely accidental act is not liable for its harmful results, *Stanley* v. *Powell* [1891], 1 Q. B. D. 86, 60 L. J. Q. B. 52; *Brown* v. *Kendall*, 6 Cush. 292; *Spade* v. *Lynn, Etc., Ry.*, 172 Mass. 488, 52 N. E. 747, 70 Am. St. Rep. 298; unless guilty of actionable negligence. This qualification was pointed out in *Vosbury* v. *Putney*, supra, in which the court, while holding an infant who, without malice, kicked another boy on the leg in school hours, liable for his unlawful act, seemed to prophesy the present case by saying that had the parties been on the school playground engaged in usual boyish sports, the act probably would have been neither unlawful nor actionable. In construing actionable negligence the courts hold an infant to such care and prudence only as is usual among children of that age and experience, in similar circumstances. COOLEY, TORTS, Ed. 3, p. 823; *Anderson* v. *Chicago Brass Co.*, 127 Wis. 273, 106 N. W. 1077. The court in the principal case holds the act of the defendant "lawful and laudable," and considering the comparative standard of negligence applied to